Woon Kwok Cheng v HR Hochstadt & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S5-24-23 OF 1997
JAMES FOONG J
12 MAY 1997

Administrative Law *— Exercise of judicial functions — Domestic tribunal — Trained jockey deprived of jockey licence — Applicant's livelihood affected by domestic tribunal's refusal to grant licence — Court's jurisdiction to grant judicial review of decision of domestic tribunal — Whether judicial review of decision was permissible*

Administrative Law *— Rules of natural justice — Procedural fairness — Refusal to issue jockey licence — Deprivation of livelihood — No reason for refusal of licence given — Whether applicant had a legitimate expectation that his application would be considered and, if rejected, reasons would be given — Whether refusal to grant licence without reasons attached would tantamount to a breach of procedural fairness and natural justice*

The plaintiff was a professional jockey who had a jockey licence granted by the Malayan Racing Association ('the MRA'). He was disqualified from riding as a jockey for a period of five years effective from 6 September 1990. After five years had lapsed, on 15 January 1996, the plaintiff applied to the MRA for a jockey licence, stating that he had fully served his time which ended on 8 January 1996. On 26 January 1996 after considering his application, the MRA Licensing and Disciplinary Sub-Committee ('the L & D committee') rejected it and this was endorsed by the Committee of the MRA ('the committee'). This decision was conveyed to the plaintiff without discussing any grounds for their rejection. The plaintiff appealed to the committee to reconsider their decision. The MRA replying to the plaintiff of their agreement to reconsider the plaintiff's application, but required the plaintiff to be present before a special committee of the MRA on a specific date 'to show cause why your [the plaintiff's] licence should be reinstated'. The plaintiff refused. In the absence of the plaintiff, the committee met and dismissed the plaintiff's appeal.

By this time, the plaintiff had filed before this court for a judicial review praying: (a) for a declaration that the decision of the L & D committee and the endorsement of this decision by the committee in rejecting the plaintiff's application for a jockey licence were wrong in law and therefore null and void; (b) that the respondents, being committee members and secretaries respectively of the MRA, do within a period of 14 days from date of the order issue a jockey licence to the plaintiff upon the plaintiff paying the appropriate registration fee for such licence; and (c) costs.

The main contention of the plaintiff was that there was no procedural fairness practised by the respondents when they failed to give reasons for their decisions — this tantamounts to an abuse of natural justice — entitling the plaintiff to the reliefs sought. The respondents, while denying this and claiming their rights to non-disclosure of reasons for their decision, brought forth their objection

to this court's jurisdiction to grant judicial review of the decisions of the L & D committee and the committee, which they said were from domestic tribunals. A

Held, allowing the plaintiff's application:

(1) There was no blanket restriction to judicial review of all decisions made by the MRA. There were decisions where circumstances of the case make it amenable to judicial review. These were in respect of those decisions handed down by the MRA where no contractual relationship could be established between the parties, and where the livelihood of the plaintiff was affected particularly in the trade or profession controlled and regulated by the respondents and of which the plaintiff was trained or has chosen to enter. In the light of the facts of this case and considering the plaintiff was a trained jockey where his livelihood was towards this nature of work, his application for judicial review of the decision of the MRA was permissible (see p 803D–I); *Nagle v Feilden & Ors* [1966] 1 All ER 689 followed. B C D

(2) As disclosed from the facts of this case, the plaintiff was a trained jockey. In order to earn his living, he had to have a professional jockey licence issued by the MRA. Without it, there was no way he could participate in this profession — thereby depriving him of a livelihood. The plaintiff was therefore in the category of those whose deprivation of a livelihood would be affected by the decision of the MRA as well as those who had a legitimate expectation that their application would be considered and when rejected, reasons would be given. By rejecting the plaintiff without reasons attached would tantamount to a breach of procedural fairness and natural justice which entitled him to succeed in his first two prayers of his application (see p 804F–H). E F

[Bahasa Malaysia summary

Plaintif adalah joki profesional yang mempunyai lesen joki yang diberikan oleh Persatuan Perlumbaan Malaya ('PPM'). Beliau telah dilucutkan kelayakan daripada menunggang sebagai joki untuk tempoh masa selama lima tahun berkuatkuasa daripada 6 September 1990. Selepas tempoh lima tahun telah tamat, pada 15 Januari 1996, plaintif telah memohon kepada PPM untuk lesen joki, menyatakan bahawa beliau telah menjalani tempoh masa sepenuhnya yang berakhir pada 8 Januari 1996. Pada 26 Januari 1996, setelah menimbangkan permohonan itu, Jawatankuasa Kecil Pelesenan dan Disiplin PPM ('jawatankuasa P & D') menolaknya dan ini telah disahkan oleh Jawatankuasa PPM ('jawatankuasa tersebut'). Keputusan ini disampaikan kepada plaintif tanpa membincangkan apa-apa alasan tentang penolakannya. Plaintif membuat rayuan kepada jawatankuasa tersebut untuk menimbangkan semula keputusan mereka. PPM bersetuju untuk menimbang semula permohonan plaintif, tetapi menghendaki plaintif hadir di hadapan jawatankuasa khas PPM pada tarikh yang ditetapkan 'untuk memberi tunjuk sebab mengapa lesen G H I

kamu [plaintif] patut dikembalikan'. Plaintif menolak. Dalam ketidakhadiran plaintif, jawatankuasa tersebut bermesyuarat dan menolak rayuan plaintif.

Sementara itu, plaintif telah memfailkan di hadapan mahkamah ini untuk kajian semula kehakiman menuntut: (a) untuk suatu deklarasi bahawa keputusan jawatankuasa P & D dan pengesahan keputusan ini oleh jawatankuasa tersebut dalam menolak permohonan plaintif untuk lesen joki adalah salah di sisi undang-undang dan oleh itu adalah batal dan tak sah; (b) bahawa penentang-penentang, yang merupakan ahli-ahli jawatankuasa dan setiausaha-setiausaha PPM masing-masing, dalam masa 14 hari dari tarikh perintah mengeluarkan lesen joki kepada plaintif setelah plaintif membayar yuran pendaftaran yang sewajarnya untuk lesen itu; dan (c) kos.

Hujah utama plaintif adalah bahawa tiada keadilan prosedur yang dilaksanakan oleh penentang-penentang apabila mereka gagal untuk memberi alasan bagi keputusan mereka — ini sama seperti penyalahgunaan keadilan asasi — yang memberikan hak kepada plaintif untuk mendapatkan relief yang dipohon. Penentang-penentang, manakala menafikan ini dan menuntut hak-hak mereka untuk tidak mendedahkan alasan-alasan bagi keputusan mereka, mengemukakan bantahan mereka terhadap bidang kuasa mahkamah untuk membenarkan kajian semula kehakiman berkenaan dengan keputusan jawatankuasa P & D dan jawatankuasa tersebut, yang mereka katakan daripada tribunal domestik.

Diputuskan, membenarkan permohonan plaintif:

(1) Tiada sekatan menyeluruh terhadap kajian semula kehakiman atas semua keputusan yang dibuat oleh PPM. Terdapat keputusan-keputusan di mana keadaan-keadaan kes membuatnya perlu kepada kajian semula kehakiman. Ini adalah berkaitan dengan keputusan-keputusan yang diberikan oleh oleh PPM di mana tiada perhubungan kontraktual dapat dibuktikan di antara pihak-pihak, dan di mana punca pendapatan plaintif terjejas terutamanya dalam perniagaan atau profesion yang dikawal dan diatur oleh penentang-penentang dan di mana plaintif dilatih atau telah memilih untuk memasuki. Berdasarkan fakta-fakta kes dan mengambil kira bahawa plaintif adalah joki yang terlatih yang mana punca pendapatannya adalah dalam kerja yang sedemikian, permohonannya untuk kajian semula kehakiman terhadap keputusan PPM adalah dibenarkan (lihat ms 803D–I); *Nagle v Feilden & Ors* [1966] 1 All ER 689 diikut.

(2) Seperti yang didedahkan oleh fakta-fakta kes ini, plaintif adalah joki terlatih. Demi untuk menyara kehidupannya, beliau perlu ada lesen joki profesional yang dikeluarkan oleh PPM. Tanpanya, tidak ada cara baginya untuk menyertai profesion ini — dengan itu melucutkan punca pendapatannya. Oleh itu, plaintif adalah dalam kategori mereka yang mana pelucutan punca pendapatan akan terjejas dengan keputusan PPM dan juga mereka yang mempunyai jangkaan yang sah bahawa permohonan mereka akan

dipertimbangkan dan apabila ditolak, alasan-alasan akan diberikan. Dengan menolak plaintif tanpa alasan diberikan sama seperti melanggar keadilan prosedur dan keadilan asasi yang memberikannya hak untuk berjaya dalam dua tuntutan pertama permohonannya (lihat ms 804F–H).]

Notes

For cases on the exercise of judicial functions, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 51–70.

For cases on the rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 453–501.

Cases referred to

Breen v Amalgamated Engineering and Foundry Workers Union & Ors [1971] 1 All ER 1148 (refd)

Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481 (refd)

Law v National Greyhound Racing Club Ltd [1983] 3 All ER 300 (refd)

Nagle v Feilden & Ors [1966] 1 All ER 689 (folld)

R v Criminal Injuries Compensation Board, ex p Lain [1967] 2 All ER 770 (refd)

R v Disciplinary Committee of the Jockey Club, ex p Aga Khan [1993] 2 All ER 853 (refd)

R v Disciplinary Committee of the Jockey Club, ex p Massingberd-Mundy [1993] 2 All ER 207 (refd)

Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487 (refd)

Shahabudin (*Marbeck Collin Goonting & Shahabudin*) for the plaintiff.
WH Tang (*Arifin & Partners*) for the defendants.

James Foong J:

Factual background

The plaintiff was a professional jockey who had a jockey licence granted by the Malayan Racing Association ('the MRA'). On 29 July 1990, he rode the horse 'Joy of the Jungle' in race 3 on the fourth day of the Penang July Race Meeting. At an enquiry held on 6 September 1990 before the racing stewards, he was found guilty of not running the horse on its merits and was duly disqualified from riding as a jockey for a period of five years effective from 6 September 1990. Dissatisfied with the decision, he appealed to the Committee of the MRA ('the committee') but his appeal was dismissed. Court actions for judicial review were then instituted by him culminating in the (then) Supreme Court dismissing his appeal with costs.

Five years have since lapsed, and on 15 January 1996, the plaintiff applied to the MRA for a jockey licence, stating that he had fully served his time which ended on 8 January 1996. On 26 January 1996 after considering his application, the MRA Licensing and Disciplinary Sub-Committee ('the L & D committee') rejected it and this was endorsed by the committee.

This decision was conveyed to the plaintiff on 27 February 1996 without discussing any grounds for their rejection.

Undeterred, the plaintiff appealed to the committee to reconsider their decision. This was responded to by the MRA replying to the plaintiff on 13 January 1997 of their agreement to reconsider the plaintiff's application, but required the plaintiff to be present before a special committee of the MRA on a specific date 'to show cause why your [the plaintiff's] licence should be reinstated'. Offended by such remarks and request, the plaintiff replied that he would not attend such a 'show cause' enquiry as it would 'be futile'. In the absence of the plaintiff, the committee met on 1 February 1997 and dismissed the plaintiff's appeal. By this time, the plaintiff had filed before this court by way of originating summons for a judicial review praying: (a) for a declaration that the decision of the L & D committee dated 26 January 1996 and the endorsement of this decision by the committee on 27 February 1996 in rejecting the plaintiff's application for a jockey licence were wrong in law and therefore null and void; (b) that the respondents, being committee members and secretaries respectively of the MRA, do within a period of 14 days from date of the order issue a jockey licence to the plaintiff upon the plaintiff paying the appropriate registration fee for such licence; and (c) costs.

The issues

The main contention of the plaintiff was that there was no procedural fairness practised by the respondents when they failed to give reasons for their decisions — this tantamounts to an abuse of natural justice — entitling the plaintiff to the reliefs sought. The respondents, while denying this and claiming their rights to non-disclosure of reasons for their decision, brought forth their objection to this court's jurisdiction to grant judicial review of the decisions of the L & D committee and the committee, which they said were from domestic tribunals.

The right to judicial review

For the sake of good order, it was appropriate for this court to deal with the issue of jurisdiction before embarking on the question of procedural fairness.

It has long been considered in the field of administrative law that private or domestic tribunals are outside the scope of judicial review, which is mainly reserved for acts, decisions, determinations, orders and omissions of public bodies or those performing public functions: see Lord Parker CJ's observation in *R v Criminal Injuries Compensation Board, ex p Lain* [1967] 2 All ER 770 at p 778. The rationale for this reluctance in expanding the sphere to private or domestic tribunals is based on the claim that these tribunals' authority was derived solely from contract — that is, from the agreement of the parties concerned. Such being the case, remedies under private law should be sufficient without resorting to judicial review.

But what happens if the body in question is exercising a public law function, or if the exercise of its function has public law consequence, yet it is a private body: are their decisions subject to judicial review?

The MRA is a private member's club with its own constitution, rules and regulations. Like the Jockey Club of Great Britain, its origins up to the present day are not dependent on or derived from any legislature. Yet it is common knowledge, of which this court can take judicial notice, that by conducting and regulating the sport of horse racing in this country, the MRA affects the lives of a sizable portion of the population. They either punt or place bets at the MRA's acknowledged premises or 'outside' it, train horses for the jockeys to ride on or keep these fine animals to run in each race. From such occupations, the government derives substantial revenue in the form of taxes. Though often disguised within the category of a sporting activity like tennis or swimming, horse-racing — to a substantial extent — is gambling. And being of wager in nature, the social fabric of the community is affected, particularly when it is opened to the public to lay bets on horse runs or numbers drawn by the MRA. Except for certain governmental regulations, the conduct of this enterprise is largely in the hands of the MRA. They monopolize this trade which is significant to the public and some say that they have even taken on the character of an industry. By such acts, one has little doubt that the MRA does exercise a public law function or the exercise of its function has public law consequences. Under these circumstances, do the decisions of the MRA fall within the confines of public law or private law?

The Court of Appeal in Great Britain in the case of *Nagle v Feilden & Ors* [1966] 1 All ER 689 had the opportunity to encounter this question. The facts were these: the stewards of the Jockey Club had refused to grant a horse trainer licence to the applicant, who was a woman. The consequence was that without such a licence, horses trained by her could not partake in races sanctioned by the Jockey Club. She sought a declaration that such practice was against public policy and for injunction. The High Court struck off her statement of claim for want of a cause of action since she could not succeed unless a contractual relationship between herself and the Jockey Club was shown to have existed. There was none, and even if there was, there was no breach.

Leading the crusade to grant her the relief, Lord Denning MR had this to say (at p 693):

> Now, I quite agree that if we were here considering a social club, it would be necessary for the plaintiff to show a contract. If a man applies to join a social club and is blackballed, he has no cause of action because the members have made no contract with him. They can do as they like. They can admit him or refuse him, as they please; but we are not considering a social club. We are considering an association which exercises a virtual monopoly in an important field of human activity. By refusing or withdrawing a licence, the stewards can put a man out of business. This is a great power. If it is abused, can the courts give redress? That is the question.

His answer is found in p 694:

> When an association, who have the governance of a trade take it upon themselves to license persons to take part in it, then it is at least arguable that they are not at liberty to withdraw a man's licence — and thus put him out of business — without hearing him. Nor can they refuse a man a licence — and thus prevent him from carrying on his business — in their uncontrolled

A discretion. If they reject him arbitrarily or capriciously, there is ground for thinking that the courts can intervene.

However, the extent of this principle seems to have some reservations 27 years later in the same court under the case of *R v Disciplinary Committe of the Jockey Club, ex p Aga Khan* [1993] 2 All ER 853, where judicial B review was refused. The facts of that case were these: Aga Khan, the applicant, was the leader of a religious sect. However, he was also a racing fan, a breeder and horse owner. He entered his horse 'Aliysa' for a race, which won. But on a routine check, camphor, a prohibited substance under the Rules of Racing, was discovered in the urine of this horse. An enquiry was held by the Jockey Club, which disqualified the horse and C forfeited the winning. The source of camphor was never identified and it was never alleged that the owner or trainer caused or connived at the doping. Dissatisfied, the applicant sought the court's indulgence in judicial review of the decision of the Jockey Club.

Sir Thomas Bingham MR (as he then was), after exhaustively analysing D all relevant authorities on this aspect of the law, concluded with this at pp 866–867:

> I have little hesitation in accepting the applicant's contention that the Jockey Club effectively regulates a significant national activity, exercising powers which affect the public and are exercised in the interest of the E public. I am willing to accept that if the Jockey Club did not regulate this activity, the government would probably be driven to create a public body to do so.
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> But the Jockey Club is not in its origin, its history, its constitution or (least of all) its membership a public body. ...
>
> I would accept that those who agree to be bound by the Rules of Racing F have no effective alternative to doing so if they want to take part in racing in this country. It also seems likely to me that if, instead of the Rules of Racing administered by the Jockey Club, there were a statutory code administered by a public body, the rights and obligations conferred and imposed by the code would probably approximate to those conferred and imposed by the Rules of Racing. But this does not, as it seems to me, alter G the fact, however anomalous it may be, that the powers which the Jockey Club exercises over those who (like the applicant) agree to be bound by the Rules of Racing derive from the agreement of the parties and give rise to private rights on which effective action for a declaration, an injunction and damages can be based without resort to judicial review. It would in my opinion be contrary to sound and long-standing principle to extend the H remedy of judicial review to such a case.

A considerable influence on that decision was derived from another Court of Appeal decision in *Law v National Greyhound Racing Club Ltd* [1983] 3 All ER 300. The facts in that case were these: the plaintiff was a trainer whose licence had been suspended because he had had charge of a I greyhound which had been found to have a prohibited substance in its tissues on examination. He issued an originating summons seeking a declaration that the stewards' decision was void and ultra vires because it was reached in breach of an implied duty of fairness and for injunction and damages. The National Greyhound Racing Club moved to strike out the plaintiff's action on the ground that it should have sought judicial review.

This was rejected and the judgment of Lawton LJ at p 303 displays the rationale behind it:

> In my judgment, such powers as the stewards had to suspend the plaintiff's licence were derived from a contract between him and the defendants. This was so for all who took part in greyhound racing in stadiums licensed by the defendants. A stewards' enquiry under the defendants' rules of racing concerned only those who voluntarily submitted themselves to the stewards' jurisdiction. There was no public element in the jurisdiction itself. Its exercise, however, could have consequences from which the public benefited, as for example by the stamping out of malpractices, and from which individuals might have their rights restricted by, for example, being prevented from employing a trainer whose licence had been suspended. Consequences affecting the public generally can flow from the decisions of many domestic tribunals. In the past, the courts have always refused to use the orders of certiorari to review the decisions of domestic tribunals.

Fox LJ, in expressing his concurrent judgment in the same case at p 305, had this to add:

> Accordingly, in my view, the authority of the stewards to suspend the licence of the plaintiff derives wholly from a contract between him and the defendants. I see nothing to suggest that the defendants have rights or duties relating to members of the public as such. What the defendants do in relation to the control of greyhound racing may affect the public, or a section of it, but the defendants' power in relation to the matters with which this case is concerned are contractual.

Despite these two rulings, it was felt at some quarters in recent years that not all findings flowing from the Jockey Club were not amenable to judicial review. In the case of *R v Disciplinary Committee of the Jockey Club, ex p Massingberd-Mundy* [1993] 2 All ER 207, Neill LJ sitting in the Queen's Bench Division expressed as follows (at p 219):

> Accordingly, if the matter were free from authority I might have been disposed to conclude that some decisions at any rate of the Jockey Club were capable of being reviewed by the process of judicial review.

Nevertheless, in the circumstances of that case — which facts were that the applicant, a local steward sought judicial review of a decision of the Jockey Club that his name be removed from the list of those who were disqualified to act as chairman of a panel of local stewards — the court ruled against him on the ground the decision of the Jockey Club was not within the sphere of public law.

Looking at the facts of these cases — particularly *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan* and *Law v National Greyhound Racing Club Ltd* — I entirely subscribe to the views so expressed by the learned judges of the English Court of Appeal, but in all these situations, there was established contractual relationship between the applicant/plaintiff with the defendants. In *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan*, by agreeing to run 'Aliysa' at the race controlled by the defendants, the applicant accepted on contract to be bound by the defendants' rules. In a similar vein, the plaintiff in *Law v National Greyhound Racing Club Ltd*'s case had a contractual relationship with the defendants by the issuance to him of a trainer's licence by the defendants. Extending

A this even to *R v Disciplinary Committee of the Jockey Club, ex p Massingberd-Mundy*, there was a contractual nexus between the steward and the Jockey Club. But what will be the situation when there is no or a yet to be established contractual relationship, as in the circumstances of our case or that of *Nagle v Feilden & Ors*, where the plaintiff is and was representively not even allowed to enter into any contractual bond with the defendant? Though the plaintiff in our case once held a jockey licence, that licence, like all jockey licences, was only valid for a period of one year — for the plaintiff, it expired in 1990. Thus, when the plaintiff made his application for a jockey licence for the year 1996, it was akin to a completely new application. All contractual relationships between the plaintiff and the C defendants which once existed (when the plaintiff held the jockey licence in 1990) had ceased; would putting the plaintiff on the same footing as a candidate who first applies for such licence and is refused without reasons attached entitle him to the public law remedy of judicial review? Without this remedy, he would not succeed in private law since there is no contractual relationship between them.

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In my opinion, there is no blanket restriction to judicial review of all decisions made by the MRA. There are decisions where circumstances of the case make it amenable to judicial review. These are in respect of those decisions handed down by the MRA where no contractual relationship could be established between the parties, and where the livelihood of the E plaintiff is affected particularly in the trade or profession controlled and regulated by the defendant and of which the plaintiff is trained or has chosen to enter. This principle is not without support as Lord Denning MR in *Nagle v Feilden & Ors* (which no subsequent case has revised) believed (at p 694B):

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> We live in days when many trading or professional associations operate 'closed shops'. No person can work at his trade or profession except by their permission. They can deprive him of his livelihood. When a man is wrongly rejected or ousted by one of these associations, has he no remedy? I think that he may well have, even though he can show no contract. The courts have power to grant him a declaration that his rejection and ouster was G invalid and an injunction requiring the association to rectify their error.

And at p 694F:

> The true ground of jurisdiction in all these cases is a man's right to work. I have said before, and I repeat it now, that a man's right to work at his trade or profession is just as important to him as, perhaps more important than, H his rights of property.

In the light of the facts of this case and considering the plaintiff is a trained jockey where his livelihood is towards this nature of work, I find that his application for judicial review of the decision of the MRA is permissible.

I *The necessity to give reasons*

There can be no denial that the letter by the MRA to the plaintiff dated 27 February 1996 gave no reason as to why the plaintiff's application for the jockey licence was rejected. However, subsequently in the affidavit of the secretary of the MRA, the defendants hinted that the licence was not

granted in accordance with reg 37.6 of 'The Malayan Racing Association Calendar 1995', which is the constitution of the MRA. Under reg 37.6, there are 11 criteria that must be satisfied before an application for such a licence can be considered. But which one of the criteria the plaintiff failed in satisfying is not disclosed. All in all, no reason has ever been given as to why the plaintiff's application was rejected.

The duty to give reasons by a tribunal is adequately covered in the judgment of *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487, which was highlighted in the recent Court of Appeal case of *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481. I do not intend to analyse this aspect of the law further, except to focus on the present established and accepted legal principles in this country. Basically, of relevance to this case is the rationale of Lord Denning MR in his dissenting judgment in *Breen v Amalgamated Engineering and Foundry Workers Union & Ors* [1971] 1 All ER 1148 which is (at p 1154):

> If a man seeks a privilege to which he has no particular claim — such as an appointment to some post or other — then he can be turned away without a word. He need not be heard. No explanation need be given: see the cases cited in *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149. But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard ... . If he is a man who has got some right or interest or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given ... . The giving of reasons is one of the fundamentals of good administration.

As disclosed from the facts of this case, the plaintiff is a trained jockey. In order to earn his living, he has to have a professional jockey licence issued by the MRA. Without it, there is no way he can participate in this profession — thereby depriving him of a livelihood. It is also obvious that before he made his application to the MRA, he would have known, or to a substantial degree have been aware, of the basic criteria as set out under reg 37.6, or even of the opinion that he had fulfilled them. This is reflected in his letter of application concerning his weight of 46kg which is well below that of 54kg set as a ceiling under criteria 10 of reg 3.7. These set him into the category of those whose deprivation of a livelihood will be affected by the decision of the MRA as well as those who have a legitimate expectation that their application will be considered and when rejected, reasons would be given. By rejecting the plaintiff without reasons attached would tantamount to a breach of procedural fairness and natural justice which entitles him to succeed in his first two prayers of his application.

Accordingly, I hereby allow prayers 1 and 2 of encl 1 and advise the defendants to reconsider the plaintiff's application — and if rejected, to give their reason. For this and for the time being, prayer 3 requesting the defendants to issue the plaintiff with a jockey licence is hereby refused. I am also awarding costs of this application to the plaintiff.

Order accordingly.

Reported by Loo Lai Mee